BEFORE THE
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Application of SBC Communications, Inc.	)	No. CC Docket No. 97-121
Pursuant to Section 271 of the	)	
Telecommunications Act of 1996 to	)	
Provide In-Region InterLATA	)	
Services in Oklahoma	)	

COMMENTS OF SPRINT COMMUNICATIONS COMPANY, L.P.
IN SUPPORT OF MOTION TO DISMISS

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April 28, 1997

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COMMENTS IN SUPPORT OF MOTION TO DISMISS

Sprint Communications Company L.P. ("Sprint"), by its attorneys and pursuant to the Public Notice issued by the FCC on April 23, 1997, files these comments in support of the Motion to Dismiss filed by the Association for Local Telecommunications Services ("ALTS") and urges the Commission to dismiss the above-captioned application of SBC Communications, Inc. ("SBC"). Under Section 271(c), a BOC has two possible "tracks" to receive in-region interLATA authority, the standards for which are set forth in Section 271(c)(1)(A) ("Track A") and Section 271(c)(1)(B) ("Track B"). Because SBC's application is facially defective under either Track, it can and should be summarily dismissed without the need for further inquiry.

I. INTRODUCTION AND SUMMARY.

ALTS is surely correct in its analysis, based on uncontested facts, that SBC cannot satisfy "Track A," and further, that SBC is not eligible to pursue "Track B" relief. With respect to Track A, SBC's application itself reveals that there are no

operational, interconnecting competitive local exchange carriers providing business and residential services over their own facilities. As augmented by the affidavit and exhibits accompanying the ALTS Motion, the record unequivocally shows that there is no CLEC providing local residential service on any basis: SBC has put the FCC and the public to this trouble on the basis of Brooks Fiber's experimental, non-remunerative, resale service to four of its employees.

Track B is unavailable to SBC as a matter of law because SBC in fact received requests for interconnection from a number of firms, including Brooks Fiber, AT&T, and Sprint. These firms each sought access and interconnection in order to provide competitive services in the manner contemplated by Track A, and thus their requests (and others') eliminated Track B as a path to receiving Section 271 authority.

II. SBC CANNOT DEMONSTRATE COMPLIANCE WITH TRACK A.

SBC hinges its entire argument for satisfying Track A on its assertion that "Brooks Fiber [] serves both business and residential customers in Oklahoma and offers its service exclusively or predominantly over facilities it owns or obtains from a party other than [SBC]." (Br. at 12). The record makes plain, however, that Brooks Fiber is not providing residential service on a commercial basis, and that it is merely testing four residential circuits. All four residential "customers" are Brooks Fiber employees being served on an experimental basis

through resale of SBC's local exchange service.[1] As ALTS has demonstrated, this fact alone warrants denial of SBC's application under Track A.

Section 271(c)(1)(a) was designed to ensure that petitioning BOCs were not granted interLATA entry until and unless the FCC found that genuine facilities-based entry has emerged. To that end, a BOC seeking interLATA entry must demonstrate that it has entered into interconnection agreements that have been approved under section 252 and pursuant to which the BOC "is providing access and interconnection" to unaffiliated providers of "telephone exchange service (. . . excluding exchange access) to residential and business subscribers."[2] Further, the competing providers must offer local service "exclusively" or "predominantly" over their own telephone exchange service facilities. Id. (emphasis added).

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[1] The ALTS Motion serves to highlight this fact, but it was also incontestable based on SBC's own submission. See SBC Application, Vol. IV, Tab 23, Brooks Fiber Initial Comments before the Oklahoma Corporations Commission at 2, OCC Docket No. 97-0000064 (March 11, 1997)(Brooks is currently providing local exchange service to four people "all through resale of [SBC's] local exchange service and all currently on a test basis."). AT&T's submission to the OCC had pointed out to the OCC that all four residential customers are Brooks employees. See SBC Application, Vol. IV, Tab 21, Affidavit of Turner at ¶ 10. At the April 15, 1997, hearing before the Oklahoma ALJ, Brooks "confirmed that this information was accurate as of the date of the hearing." See ALJ Order, 97-0000064 at 27 (April 21, 1997). The ALJ Order was submitted into the FCC's record on April 23,1997, by Sprint, once it learned that SBC had not submitted it.

[2] See 47 U.S.C. § 271(c)(1)(A) (emphasis added).

Brooks Fiber's limited activity in Oklahoma fails in a number of other ways to meet the criteria set out in Track A. Sprint understands these issues to be outside the limited request for comments set out in the April 23 Public Notice, however, and reserves discussion on these points.

III. SBC IS FORECLOSED FROM PURSUING SECTION 271 AUTHORITY UNDER TRACK B OF SECTION 271(c) BECAUSE SBC TIMELY RECEIVED REQUESTS FOR ACCESS AND INTERCONNECTION.

SBC asserts that Tracks A and B are not mutually exclusive, and it has therefore sought Section 271 authorization under both Track A and Track B. (Br. at 13-15). As ALTS has shown, and as explicated below, SBC may pursue Section 271 authority only under Track A. SBC's purported eligibility under Track B is predicated on a reading of Section 271(c)(1) that would essentially eviscerate Track A. Such a reading has little basis in the language, legislative history, or policies of the statute.

A. Track A Provides The Primary Avenue For BOC Compliance With Section 271(c) To Which Track B Is A Limited Exception.

Section 271(c)(1) and its legislative history make evident that the timing of BOC in-region interLATA entry is governed by the fundamental policy of the 1996 Act of encouraging local facilities-based entry under Track A; only where good faith requests for interconnection have not been made does Track B apply. SBC inverts the fundamental logic of Section 271. It argues that since Congress recognized that Track A competition would take some time, it must have offered up Track B to the BOCs as a way of circumventing that delay and expediting their entry

into long distance (Br. at 13-14). This construction must have surprised anyone hearing it for the first time.

As ALTS has cogently shown, the presence of facilities-based local competition was clearly Congress' preferred method for evaluating BOC compliance with Section 271(c)(1). Section 271(c)(1)(B) specifically provides that Track B is available only where Track A is unavailable, an unambiguous indication that Congress intended Track A to take precedence over Track B.

SBC's argument is wrong because it misunderstands the relative importance of Tracks A and B. The overarching goal of the 1996 Act is the development of competition, a goal that is obviously furthered by the competitive local entry contemplated by Track A.[3] This fundamental legislative purpose must inform this Commission's interpretation of Section 271(c)(1).

Congress explained in the Conference Report that "operational" facilities-based local entry pursuant to an "implemented agreement" as called for by Track A is central to the specific schemes of section 271 and 252.[4] Such entry would (1) "assist the appropriate State commission in providing its consultation" with the FCC, (2) assist "in the explicit factual determination by the Commission under new section 271(d)(2)(B)

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[3] Entry into the local market where there is currently virtually no competition serves congressional intent more effectively than the entry of another firm into the already competitive long distance business. Of course, Track A contemplates entry into both markets.

[4] S. Conf. Rep. No. 104-230, at 148 (1996)("Conference Report").

that the requesting BOC has fully implemented the interconnection agreement elements set out in the 'checklist' under new section 271(c)(2),"[5] and (3) provide subsequent entrants an expedited means of entry through Section 252(i).[6] In contrast, Track B materially diminishes the opportunities to facilitate and evaluate local competition.

Furthermore, to view Track A as equal or subordinate to Track B in the statutory scheme would lead to absurd results. For example, Congress was careful to ensure that Track A compliance could not be achieved through interconnection with

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[5] Id. The FCC can, in other words, be far more confident that a BOC has complied with the checklist requirements and competition has been enabled if new entrants are providing competitive service pursuant to an interconnection agreement. As the House Report stated, the facilities-based entry requirement:

> is the integral requirement of the checklist, in that it is the tangible affirmation that the local exchange is indeed open to competition. In the Committee's view, the "openness and accessibility" requirements are truly validated only when an entity offers a competitive local service in reliance on those requirements.

H.R. Rep. No. 104-204, pt. 1, at 77 (1995)("House Report"). Further, because a Statement of Generally Available Terms and Conditions need only have been allowed to go into effect, rather than affirmatively found to have satisfied the terms and policies of Sections 251 and 252, the state public service commission role may be materially reduced by this route. This reasoning also explains why SBC is wrong is asserting that it can mix and match Track A (agreements) and Track B (SGAT)for purposes of demonstrating checklist compliance under Track A. Sprint understands this issue to be outside the scope of the Public Notice, and will fully brief this issue at the appropriate time.

[6] See House Report, supra, at 77.

carriers lacking independent facilities or with carriers with only certain kinds of facilities (e.g., cellular) -- entities which Congress appropriately viewed as less effective competitors for the BOCs. Yet Track B approval requires no demonstration of local competition *at all*. SBC's interpretation essentially would hold that Congress was indifferent (at most) to the grounds upon which a BOC would be granted interLATA authority, i.e. whether the BOC 1) was able to show that facilities-based competition had developed, or 2) the BOC merely filed an SGAT accompanied by no demonstration of local competitive entry of any kind. Under SBC's approach, Congress' insistence under Track A that only demonstrable, facilities-based entry should count would result in resort to Track B, ensuring that competitive entry would not be considered at all in most instances. This is certainly not what Congress intended when it defined the Track A standard, and is certainly not what the competition principles of the '96 Act establish.

B. Track B Is Available Only Where A BOC Has Not Received A Timely Interconnection Request Under Section 271(c)(1).

SBC maintains that Track B is available in any state in which a facilities-based provider is not currently providing competitive local exchange service to both residential and business customers. (Br. at 14). In this "Heads we win, tails you lose" rhetorical game set forth by SBC, if a BOC cannot meet the terms of Track A because consumers have yet to receive the benefits of competitive alternatives, then the BOC automatically is entitled to turn to Track B. Again, this approach ignores

both the plain language of the statute and the policies underlying the 1996 Act.

At the outset, it should be emphasized that SBC's construction would require us to believe that Congress took a most circuitous and well-hidden route to get where SBC claims it did. If Congress had meant to simply allow a BOC that couldn't satisfy Track A to alternatively opt for Track B, it could have simply articulated such a provision in the statute. Congress didn't. Instead, it plainly set forth that Track B would be triggered only in the absence of a request or good faith by the requester.

SBC's argument rests on a peculiar construction of the "no such provider" language in Section 271(c)(1)(B). SBC insists that this language refers back to the requirements for Track A approval in such a way as to incorporate the Track A standards for interLATA relief. (Br. at 14). By its own logic, this argument would require that the requesting carrier actually have achieved market success *at the time it makes its request*. This is neither a natural nor a logical interpretation of that provision.

Section 271(c)(1)(B) exempts a BOC from the facilities-based competition showing of Track A if, by December 6, 1996, "no such provider has requested the access and interconnection described in subparagraph A." The most sensible reading of this provision is that the "no such provider" language refers to a carrier that *requests* access and interconnection referred to in the first sentence of subparagraph (A). The "such provider" does *not* need

to comply with the Track A requirement that the interconnecting CLEC provide service either predominantly or exclusively over its own independent facilities in order for its request to be valid. The language of Section 271(c)(1)(A) specifically limits the predominance requirement "[f]or the purpose of this subparagraph [i.e., subparagraph (A)]." To apply this requirement to Track B would render this qualifying phrase surplusage in violation of the basic canons of statutory interpretation.[7]

Again, the congressional desire to promote congenial conditions for local entry is sabotaged by such an approach. Contrary to SBC's contentions (Br. at 13-14), Congress understood that tying 271 relief to local entry would mean some unknown delay in BOC entry. Congress acknowledged that it would take

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[7] See Pennsylvania. Dept. of Public Welfare v. Davenport, 495 U.S. 552, 562 (1990) ("Our cases express a deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment")(citation omitted); Colautti v. Franklin, 439 U.S. 379, 392 (1979) (same). See also United States v. Menasche, 348 U.S. 528, 538-39 (1955) ("It is our duty 'to give effect, if possible, to every clause and word of a statute.'")(citation omitted).

Further, SBC's reliance (Br. at 14) on statements by individual members of Congress are of little probative value. See, e.g., Garcia v. United States, 469 U.S. 70, 76 (1984) ("[W]e have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill . . . . We have eschewed reliance on the passing comments of one Member, and casual statements from the floor debates")(citations omitted); Zuber v. Allen, 396 U.S. 168, 186 (1969) ("Floor debates reflect at best the understanding of individual Congressmen").

time for CLECs to upgrade or construct networks and to extend service offerings to residential and business customers.[8]

Unlike SBC, Congress accepted the fact that promoting local competition meant accepting some delay in interLATA relief. Indeed, Track B itself reflects Congress' specific contemplation that Track A compliance would take considerable time and, notwithstanding that fact, the BOC would still be foreclosed from pursuing Track B. Section 271(c)(1)(B)(i)(ii) states that a BOC shall be considered not to have received an interconnection request if the CLEC fails to negotiate in good faith or fails to comply within a reasonable period of time with the implementation schedule contained in the agreement. If SBC were allowed to opt alternatively for either Track A or B immediately upon expiration of the 10 month waiting period, there would have been no need for Congress to specify that Track B is again available where bad faith or nonperformance is demonstrated.[9]

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[8] See, e.g., Conference Report, supra, at 148 ("This conference agreement recognizes that it is unlikely that competitors will have a fully redundant network in place when they initially offer local service, because the investment necessary is so significant.").

NARUC also has recognized in a recent report that the competition made possible by the 1996 Act will take time to develop despite the regulators' success thus far in implementing the provisions of the Act. See "The State of Competition: The Telecommunications Act of 1996, One Year After Enactment" NARUC at 2 (Although "the States and the FCC have laid much of the groundwork for the development of local exchange competition" we "are not surprised that local competition is not developing more rapidly").

[9] Again, to ignore this would violate fundamental principles of statutory construction. See cases cited n. 6, supra. Other parts of the Act also support this construction. Section

In light of the above, Track B is foreclosed to SBC because several CLECs including Brooks Fiber, Sprint and AT&T requested interconnection early in 1996. SBC attempts to escape this by arguing that a request for access and interconnection would only foreclose Track B as an option when "the competitor [begins] to provide the facilities-based service." (Br. at 15 n.15). That argument flies in the face of subparagraph B's plain language which is entitled "FAILURE TO REQUEST ACCESS" and which states that Track B takes effect if "no such provider has requested the access and interconnection described in subparagraph (A)" (emphasis added). The subparagraph goes on to explain that a BOC shall not have been deemed to have received a "request for access and interconnection" (emphasis added) under certain defined circumstances. Sprint confesses that it does not know how the English language might be used in this context to give more unambiguous direction: the statute states that a request for interconnection, not the provision of service pursuant to an interconnection agreement, forecloses the BOCs' right to pursue Track B.[10]

271(e)(1) states that the joint marketing restriction applicable to the larger IXCs would expire once a BOC "is authorized . . . to provide interLATA services in an in-region State, or [once] 36 months have passed since the date of enactment of the Telecommunications Act of 1996, whichever is earlier." Here, too, Congress' expectation that Section 271 relief might take some time -- three years (or longer -- reveals that SBC's impatience was not shared by the legislature.

[10] SBC's position becomes even more unfathomable when viewed in light of the deadlines for arbitration established in Section 252. Under Section 252(b)(4)(C), state commissions have

SBC ultimately falls back to the position that Sprint's interpretation would essentially put the timing of SBC's interLATA entry into the hands of its competitors (through their construction plans) and might result in SBC being altogether excluded from the interLATA market should the IXCs determine to compete in the local exchange on only a resale basis. (Br. at 13). Of course, one ready answer to this lies in the fact that many firms unaffiliated with IXCs have requested facilities-based interconnection. Further, Congress specifically included the bad faith negotiation and nonperformance provisions set forth in Section 271(c)(1)(B)(i) and (ii) to remedy any instance in which a CLEC might try to hold up the Track A process in a bad faith effort to forestall interLATA relief. Perhaps most relevant is the fact that CLECs (including IXCs) in Oklahoma have in fact requested interconnection agreements, and are in fact attempting to get SBC to acknowledge and fulfill its legal obligations to interconnect. SBC's concern is thus purely hypothetical. In any event, there is a distinct statutory remedy contained within the terms of Track B itself which is far more consistent with the 1996 Act's competitive goals.

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until nine months after a LEC receives an interconnection request to resolve arbitration disputes. Given the 10-month waiting period in Track B, the BOC could virtually guarantee the availability of Track B under SBC's interpretation by forcing all carrier negotiations to arbitration. Assuming the CLEC requested interconnection the day after the legislation was passed, the CLEC would still have as little as one month to begin providing service to both business and residential subscribers or else the BOC would be eligible for Track B. Congress could not have intended this result.

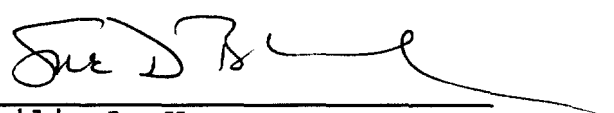
IV. CONCLUSION.

The ALTS Motion should be granted. As ALTS points out, summary dismissal is appropriate here as a matter of law and uncontested fact. Moreover, summary dismissal will tend to have the beneficial effect of signaling the BOCs not to file premature applications under Section 271.

Applications which are defective on their face, such as the instant one and the application filed earlier this year by Ameritech-Michigan waste scarce taxpayer resources, raise rivals' costs through exploitation of the legal process, and remove energies away from the all important tasks of implementing the competitive policies of the 1996 Act. The FCC should send a strong signal that these filings will not be further tolerated.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY, L.P.



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April 28, 1997

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments of Sprint Communications Company, L.P. in support of Motion to Dismiss by the Association for Local Telecommunications Services was served on this 28th day of April, 1997 on the following persons by first class mail or hand service as indicated.

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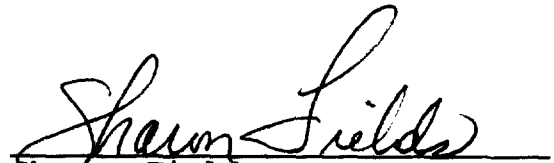

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